

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DISTRIBUTION INTERNATIONAL, INC.

vs.

EMPLOYERS INSURANCE COMPANY
OF WAUSAU

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Civil Action No.: 4:19-cv-04707
(JURY)

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Employers Insurance Company of Wausau timely files this Notice of Removal pursuant to 28 U.S.C. § 1441(a), 28 U.S.C. § 1332(a), and 28 U.S.C. §1446(b), removing this action from the 151st Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division, and in support thereof show as follows:

A. Introduction

1. Plaintiff commenced this lawsuit against Defendant in the 151st Judicial District Court of Harris County, Texas by filing its Original Petition on or about October 25, 2019. A true and correct copy of the Original Petition is attached hereto as Exhibit "A." Plaintiff served the Original Petition on Defendant Employers Insurance Company of Wausau on November 7, 2019. A true and correct copy of Defendant's Answer to Plaintiff's Original Petition, Defendant's Special Exceptions, and Defendant's Jury Demand filed on November 27, 2019 is attached hereto as Exhibit "B."

2. Defendant is filing this Notice of Removal within 30 days of their first receipt of Plaintiff's Original Petition as required by 28 U.S.C. § 1446(b).

3. Plaintiff seeks to recover damages in this lawsuit based on allegations of breach of contract, breach of the duty of good faith and fair dealing, and violations of the Texas Insurance Code resulting from the alleged conduct of Defendant. Plaintiff's claims arise under a policy of insurance on Plaintiff's commercial property issued by Defendant Employers Insurance Company of Wausau.

B. Jurisdiction & Removal

4. In a removal situation, the burden is on the removing party to establish the existence of jurisdiction and the propriety of removal. *Manguno v. Prudential Property and Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002). This Court has jurisdiction in this case pursuant to 28 U.S.C. § 1332, in that there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.00. Accordingly, statutory authority for the removal of this matter is conferred by 28 U.S.C. §§ 1441 and 1446.

5. Complete diversity under 28 U.S.C. § 1332 exists in this case. Plaintiff is a for-profit corporation organized under the laws of the State of Texas with its principal office in Houston, Harris County, Texas. Employers Insurance Company of Wausau is a company organized under the laws of the State of Wisconsin, with its principal place of business in Boston, Massachusetts.

6. In addition, the amount in controversy meets the minimum jurisdictional requirements under 28 U.S.C. § 1332. Plaintiff's Petition states it is seeking actual damages of \$600,000.00 (See Paragraph 27 of Exhibit A). In addition, Plaintiff is seeking penalty interest, multiple damages, consequential damages, punitive damages, and attorney fees. (See Paragraph 50 of Exhibit A). Therefore, the amount in controversy exceeds \$75,000.00.

C. Conclusion

7. Venue is proper in this district and division under 28 U.S.C. § 1441(a) because the state court where the action has been pending is located in this district and division.

8. Contemporaneous with the filing of this Notice of Removal, Defendant is filing a Notice of Filing Notice of Removal with the Clerk of Court for the 151st Judicial District Court of Harris County, Texas pursuant to 28 U.S.C. § 1446(d).

9. Attached hereto are all documents required by LR 81, USDC/SDTX Local Rules and 28 U.S.C. § 1446(a).

10. Plaintiff and Defendant demanded a jury in the state court action. Defendant also requests a trial by jury pursuant to Rule 81(c)(3)(A), Federal Rules of Civil Procedure and LR 38.1, USDC/SDTX Local Rules.

11. All fees required by law in connection with this Notice have been tendered and paid by Plaintiff.

WHEREFORE, Employers Insurance Company of Wausau hereby removes the above-captioned matter now pending in the 151st Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division.

Respectfully submitted,

SHEEHY, WARE & PAPPAS, P.C.

By: /s/ J. Mark Kressenberg

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**ATTORNEYS FOR THE DEFENDANT
EMPLOYERS INSURANCE COMPANY OF
WAUSAU**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above foregoing instrument has been forwarded via e-filing in accordance with the Federal Rules of Civil Procedure on this the 3rd day of December, 2019, to the following counsel of record:

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/s/ J. Mark Kressenberg

J. Mark Kressenberg